After consideration of the correspondence and the affidavits that are before me, I find that there has been a refusal by the Collector. It seems to me that the Collector had failed to carry out his statutory duties under the Ordinance. His duty was to make an award after the enquiry under section 10 had been held but he failed to do so for three months and then after two reminders from the Company, he wrote a letter in April 1958 asking for confirmation of the Company's claim in writing. When that was given he still failed to make an award and the reason given was that "the then Government froze the budget in order to give an opportunity to the incoming Government to decide on its development projects." That in my view is no excuse. The duty of the Collector was clear, he should have made an award and leave it to the incoming Government to decide whether to proceed with the acquisition or not. It would appear that this matter was forgotten for 3½ years by the Collector and no action was taken until the Company wrote on the 7th February, 1961. The absence of a reply to the letters of the applicants dated the 5th and 14th April, 1961, coupled with the fact that in the letter of the Commissioner of Lands of the 9th February, 1961 (which was signed by Mr. Un, the Collector, for the Commissioner) it was stated that the withdrawal or otherwise of the acquisition was under active consideration and not that the award was under active consideration and coupled with the fact that 3½ years have elapsed since the enquiry under section 10 was held, is in my view a clear indication of refusal. I am satisfied that the Collector has been guilty of such delay as to amount to a refusal to make an award.

Lastly, it is submitted that *mandamus* ought not to issue as the writ might be made inoperative by certain actions which are beyond the control of the Collector. It is pointed out that, if, as a matter of policy, Government withdrew the acquisition under section 53 the Collector will not be able to comply with the order.

It is true that the Court will not issue a *mandamus* if it appears that the issue of that order would be futile, but I cannot see that will be so in the present case. The Collector has a definite duty under section 10 and even if the acquisition is withdrawn the Collector still has a duty towards the applicants under section 53(2) to determine the amount of compensation due for the damage, if any, due to the said land and to pay such compensation.

For these reasons I am of opinion that a *mandamus* can properly issue to the Collector in this case. The grant of an order of *mandamus* is a matter for the discretion of the Court and in this case I have no hesitation in granting it.

Application granted.

Solicitors: *Rodyk & Davidson; State Advocate-General.*

P.Q.R. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[C.A. (Tan Ah Tah Ag. C.J., Buttrose & Ambrose JJ.) July 12, 1961]

[Singapore — Civil Appeal No. 3 of 1961]

Income Tax — Additional assessments — Figures appearing in Statement of Capital and Income — Basis for discussion — Not to be accepted as correct — Onus of proof — Discharge by taxpayer — Income Tax Ordinance (Cap. 166), ss.79, 81, 76(2), 80.

This was an appeal under section 81 of the Income Tax Ordinance from a judgment of Chua J. concerning two additional assessments made on the appellant by the Comptroller for the years of assessment, 1951 and 1952 based on the incomes for the years, 1950 and 1951. The main ground of appeal was that the Board of Review and Chua J. erred in law in regarding the figures appearing in the top line of the Statement of Capital and Income (Exhibit "A").

Held: there was no error of law on the part of the Board of Review, or the learned Judge who regarded the figures on the top line of the said exhibit merely as a basis for discussion and argument between the parties.

Per **Buttrose J.:** "This was an appeal by the taxpayer against these additional assessments and the onus of proving they were excessive lay on the taxpayer. If he did not consider it necessary himself to give evidence in discharge of that onus that was entirely a matter for him."

COURT OF APPEAL.

David Marshall for the appellant.

Lim Chor Pee (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah Ag. C.J.: This is an appeal from a judgment of Chua J. whereby he upheld the decision of the Board of Review in an appeal which was lodged by the appellant under section 79 of the Income Tax Ordinance (Cap. 166) and heard by the Board of Review under section 80 of the Ordinance.

At the hearing before the Board of Review a document which was described as a Statement of Capital and Income was put in and marked as Exhibit A. It has been strenuously argued by counsel for the appellant in this Court that both the Board of Review and the learned Judge committed the error of regarding the figures appearing in the top line of Exhibit A. which were intended to be used as a basis for discussion, as figures which were agreed and accepted as being correct. A perusal of the grounds of judgment of the Board of Review and of the learned Judge shows that there is no substance in this ground of appeal.

The view the Board of Review took of Exhibit A can be seen from the following passage from their grounds of judgment:—

"The appellant sought to prove that the items shown in the agents' figures in Exhibit A should be deducted. The Board did not accept the evidence of Mr. A.B.C. and the books of account produced and in the absence of the evidence of the appellant found that the onus of proof placed upon him by the Ordinance had not been discharged."

In his judgment the learned Judge, after referring to Exhibit A, expresses himself as follows:—

"The taxpayer said that these increases (i.e. the sums sought to be deducted) were attributable to sources which were not income and therefore not taxable. The taxpayer sought to prove that certain items should be deducted as they were not income and, as I have already said, to do this he relied entirely on the evidence of his nephew A.B.C. and on the account books, copies of accounts and documents produced."

It is, in my opinion, abundantly clear from the passages which I have just read that both the Board of Review and the learned Judge regarded the figures in the top line of Exhibit A, not as figures which had been finally agreed and accepted as being correct, but merely as a basis for discussion and argument between the parties. It follows therefore that this ground of appeal fails.

As to the other grounds of appeal, I have had the advantage of reading the judgment which is about to be delivered by my brother Buttrose. I agree with it and have nothing to add.

In my judgment, the appeal must be dismissed with costs.

Buttrose J.: This is an appeal under section 81 of the Income Tax Ordinance (Chapter 166), hereinafter referred to as "the Ordinance", from a judgment of Chua J. concerning two additional assessments made on the appellant/taxpayer by the Comptroller of Income Tax for the years of assessment, 1951 and 1952 based on the income for the years, 1950 and 1951.

The position was that the Comptroller had made additional assessments on the taxpayer for the years of assessment, 1951 to 1954 inclusive and the taxpayer had applied to the Comptroller under section 76(2) of the Ordinance for these assessments to be reviewed and revised. The Comptroller declined to do so and the taxpayer filed a Notice of Appeal under section 79 of the Ordinance and the appeal came on before the Board of Review. At the hearing the Comptroller withdrew the assessments in respect of the years, 1953 and 1954 and the appeals on these two withdrawn assessments were allowed. The appeals in respect of the 1951 and 1952 assessments were dismissed and the 1951 assessment was reduced to $196,335 and the 1952 assessment was increased to $428,560.

The decision of the Board was as follows:—

"The Comptroller withdrew his assessments for 1953 and 1954 and these appeals are therefore allowed.

As regards the assessments for 1951 and 1952 the Board is unanimously of the opinion that the appellant has not discharged the onus of proof placed upon him by the Income Tax Ordinance. Subject to what follows these two appeals are dismissed.

In the absence of evidence from either party the Board assesses and fixes the living expenses of the appellant for both years at $18,000 per annum.

The assessment for 1951 is reduced to $196,335 and the assessment for 1952 is increased to $428,560."

The taxpayer then gave notice of appeal to the High Court and subsequently the grounds of the Board of Review's judgment were filed.

The appeal came on for hearing before Chua J. who upheld the decision of the Board of Review and dismissed the appeal with costs. The taxpayer now appeals to the Court of Appeal.

At the hearing before the Board of Review the taxpayer did not give evidence and was not present throughout the proceedings. He was represented by an accountant and the only witness called on his behalf was his nephew.

The taxpayer's accountant at the commencement of the hearing put in a Statement of Capital and Income (Ex. 'A') showing the Comptroller's figures and the taxpayer's figures or as they are termed the agent's figures. Both sets of figures are arrived at by making various deductions from certain basic capital figures. This Statement is referred to in the taxpayer's Memorandum of Appeal dated the 5th April, 1961 as an agreed statement of both parties subject to certain qualifications.

It was the contention of the taxpayer that if it could be established that the capital increases shown in the Statement were attributable to sources not taxable they should be reduced accordingly. Considerable argument was addressed to us to show that certain items should be deducted as they were not income but repayments of loans made some years before or were sums of money belonging to others as for example the estate of *Y*, decd., *X* and one of the taxpayer's children. In order to establish this it was admitted that the taxpayer relied on the evidence of his only witness *X*. At the outset, therefore, it was quite clear that the case for the taxpayer depended entirely on the evidence of *X* and the account books and other documents produced. The Board of Review in its grounds of judgment stated that it did not accept the evidence of *X* and the books of account produced and in the absence of the evidence of the taxpayer found that the onus of proof placed upon him by the Ordinance had not been discharged. That conclusion having been reached, there was really nothing left to argue. It seems to me, adopting the words of Somerville L.J. in *Moschi* v. *Commissioners of Inland Revenue* [1] at p. 450, looking at the matter broadly, as it was before the Board of Review, it was fully entitled to say that the taxpayer had not discharged the onus which lay upon him of establishing his contention that the capital increases shown in the Statement (Ex. 'A') were attributable to non-taxable sources.

There was, in my opinion, no error of law on the part of the Board of Review. I am quite satisfied from a perusal of the grounds of judgment that it fully appreciated the question of the onus and quantum of proof. I am myself unable to see any merit in the argument that the use of the word "satisfied" connotes a higher degree of proof than that required by section 80(3) of the Ordinance nor, in my opinion, did the Board of Review mean or intend that it should. If the learned appeal Judge considered that a preponderance of probability was not sufficient to discharge the onus placed on the taxpayer, I respectfully disagree with him.

I do not accept the contention of the taxpayer that the Board of Review gave inadequate consideration to the evidence adduced by him and the documents. Pursuant to the provisions of section 80(5)(d) the Board of Review admitted hearsay and secondary evidence but, not surprisingly, considered it of little value. It is quite inaccurate to say that having admitted it the Board rejected it because of its hearsay character.

It was urged on behalf of the taxpayer, as I understood it, that the Board of Review should have required his attendance before it. There is, in my view, no substance in the point. This was an appeal by the taxpayer against these additional assessments and the onus of proving they were excessive lay on the taxpayer. If he did not consider it necessary himself to give evidence in discharge of that onus that was entirely a matter for him. As Isaacs Ag. C.J. of the Australian High Court pointed out in *Federal Commissioner of Taxation* v. *Clarke* [2] at p. 251:—

"The justice of that burden cannot be disputed. From the nature of the tax the Commissioner has, as a rule no means of ascertainment but what is learnt from the taxpayer, and the taxpayer is presumably and generally, in fact, acquainted with his own affairs. The onus may prove to be dischargeable easily or with difficulty according to the circumstances."

If the taxpayer fails to discharge it by not giving evidence himself on matters peculiarly within his knowledge or, for example, has conveniently lost his memory or his books or failed to keep proper books he must take the consequences.

There was, in my view, no substance in the other matters raised on behalf of the taxpayer.

In the result, therefore, in my judgment, the appeal must be dismissed with costs.

Ambrose J.: I have had the advantage of reading the judgments of the Acting Chief Justice and Buttrose J. and agree with their opinions and their conclusion that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Marshall & Chung; State Advocate-General.*

KAHU ILLIAS v. N.V. VEREENIGDE NEDERLANDSCHE SCHEEPVAARTMAATSCHAPPIJ

[O.C.J. (Buttrose J.) July 19, 1961]

[Singapore — Suit No. 1061 of 1959]

Damages — Workmen's Compensation — Acceptance from employers under Workmen's Compensation Ordinance — Whether debarred from further claim — Workmen's Compensation Ordinance (Cap. 157), ss.20(a) & 28(1).

The plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel. He accepted and received $12,780 as compensation from his employers under the Workmen's Compensation Ordinance in full settlement of his claim. He now commenced proceedings against the owners of the vessel in which the accident occurred. The main point for consideration for the Court was whether the plaintiff had recovered compensation from his employer within the meaning of section 20(a) of the said Ordinance.

Held: as the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional the plaintiff cannot now recover damages from the defendants.

Case referred to:—

(1) *Elligott* v. *Nebbett* [1948] 1 All E.R. 514.

WORKMEN'S COMPENSATION.

A. Muthuswamy for the plaintiff.

J. Grimberg for the respondents.

Cur. Adv. Vult.

Buttrose J.: The short point for decision in this case is whether, in respect of the injuries which he sustained, the plaintiff has recovered compensation from his employer within the meaning of section 20(a) of the Workmen's Compensation Ordinance (Chapter 157) hereinafter referred to as the Ordinance.

The plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel.

It is not in dispute that the plaintiff has accepted and received from the Singapore Harbour Board the maximum sum of $12,780 as compensation under the provisions of the Ordinance in full settlement of his claim. He has now taken proceedings against the defendants the owners of the vessel in which the accident occurred and who were the employers of her crew for damages for the injuries he has suffered.

The defendants contend that the plaintiff is debarred from recovering damages from them by reason of the provisions of section 20(a) of the Ordinance which reads as follows:—

"20. Where any injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Ordinance, but he shall not be entitled to recover both damages and compensation."

The effect of that section as applied to the present case is that if the plaintiff has recovered compensation from the Singapore Harbour Board, his employer, he will not be able to recover damages from the defendants for loss of wages or for pain and suffering although such matters are not included in the compensation.

The plaintiff claimed compensation from his employer and the employer recognised the claim by payment, and the plaintiff accordingly, in my view, has recovered compensation within the meaning of the Ordinance.

The case of *Elligott* v. *Nebbett* [1] turned on the construction of the corresponding section of the English Workmen's Compensation Act, 1925,